IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 716 of 1997

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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VALSAD KHAND UDYOG SAHAKARI MANDLI LTD. - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS BELA PRAJAPATI for MR BM MANGUKIYA for Petitioner
MS MINI NAIR AGP for Respondent(s) : 1 - 2.
None for Respondent(s) : 3,
MR PS CHAMPANERI for Respondent(s) : 3.2.1, 3.2.2, 3.2.3,3.2.4
MR CHIRAG B PATEL for Mr. BS PATEL for
MRS RANJAN B PATEL for Respondent(s) : 4

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
18th October, 2007

ORAL JUDGMENT

The petitioner before this Court is Valsad Khand Udyog Sahakari Mandali Limited [hereinafter referred to as, "***the Society***"], a Cooperative Society, engaged

in manufacture of sugar. The Society has challenged the order of the State Government made on 24th December, 1996. By *impugned* order, the Society has been directed to pay the price of 910 MT of sugarcane supplied by the respondent no.3 to the respondent no.4 with interest at the rate of 18% *per annum*. The respondent no. 3 is one Chandrakant Pragji Patel who transported the sugarcane to the Society. The respondent no.4 is a Cooperative Society of the sugarcane growers. It advances finance to the sugarcane growers. It has claimed first charge over the crop of sugarcane.

The dispute is in connection with the price of 910 MT of sugarcane transported by the respondent no. 3 to the Society. The dues are not in dispute. However, under the agreement with the respondent no.3, it was agreed that the dues of the respondent no.3 shall be paid to the Bank of Baroda from whom the respondent no.3 had borrowed a loan. The respondent no.4 claimed that the said payment should be made to the respondent no.4. According to the respondent no. 4, it had advanced certain loan on the crop of sugarcane and that sugarcane was sold to the

Society through the respondent no.3. The respondent no. 4 being a cooperative society, it had the first charge over the price of the said sugarcane. The amount was, therefore, recoverable by the respondent no.4.

In a complaint made to the District Registrar of Cooperative Societies, Surat by the respondent no. 3, under communication dated 28th December, 1992, the District Registrar had informed the respondent no. 3 that after adjusting the payment that he had to make or the advance payment he had received, etc., the amount that remained recoverable from the Society was just enough to cover the dues of Bank of Baroda against the loan advanced by the said Bank.

It appears that the said communication has been converted into a litigation by the respondent no. 4 by challenging the same before the Director of Sugar in Revision Application No. 1 of 1993. The said Revision Application No. 1 of 1993 was rejected by the Director of Sugar. The said order was challenged by the respondent no.4 before the State Government. The State Government, by its Order dated 28th April, 1995 *set aside* the order of the Director of Sugar and

remanded the Revision Application No. 1 of 1993 for reconsideration. After the remand, by order dated 2nd July, 1996, the said Revision Application was rejected. The Director of Sugar was of the opinion that the respondent no.4 had no claim against the Society. Feeling aggrieved, the respondent no.4 preferred Revision Application before the State Government which came to be allowed by *impugned* Order dated 24th December, 1996. The State Government was pleased to direct the Society to pay the price of 910 MT of sugarcane with interest @ 18% *per annum* to the respondent no.4. Feeling aggrieved, the Society has preferred the present petition.

Miss Prajapati has submitted that the respondent no.4 had no business with the Society. Under the agreement entered between the Bank, the respondent no.3 and the Society, the dues of the respondent no. 3 were agreed to be paid to the Bank against the loan advanced by the Bank to the respondent no.3. The claim made by the respondent no. 4 was, therefore, wholly unjustified. The State Government was also not justified in entertaining the revision application made by the respondent no. 4 and

in allowing the same.

It is not disputed that the respondent no.3 had borrowed loan from the Bank of Baroda, Valsad for purchase of a tractor. The respondent no.3 had given guarantee to the Bank to use the said tractor to transport the sugarcane to the Society and for no other purpose. It was also agreed that the money due to the respondent no.3 be paid to the Bank of Baroda against its dues against the respondent no.3. It appears that the respondent no.3 had made certain complaint to the District Registrar of Cooperative Societies in respect of his dues for supply of 910MT of sugarcane to the Society during the year 1991-1992. It was in answer to the said complaint that the District Registrar of Cooperative Societies had written communication dated 20th December, 1992 to the effect that after making necessary adjustment for the advance received etc., a sum of Rs. 2,53,526/= was due from the Society to the respondent no.3; as against that Bank of Baroda had a claim for a sum of Rs. 2,34,803/=; the amount of loan advanced for purchase of tractor and interest charged on the said amount. The said communication was challenged by the

respondent no.4 before the Director of Sugar. The Director of Sugar by his orders, first made on 11th July, 1994 and the second dated 2nd July, 1996 made after the order of remand, held that the respondent no.4 had no claim in respect of the dues of the respondent no. 3 from the Society. The State Government, however, in revision before it, reversed the said order. Before the State Government, the respondent no.4 claimed that there was a tripartite agreement and the aforesaid dues of the respondent no.3 were recoverable by the respondent no.4. The said claim was accepted by the State Government. The State Government held that the respondent no.4 had advanced loan on sugarcane crop and that it had a first charge as provided under Section 48 [1](a)(i) of the Act. The Bank of Baroda had advanced loan for the purchase of tractor, hence it had no claim over the sugarcane crop. The respondent no.4, therefore, had a prior claim. In the circumstances, the State Government directed the Society to pay its outstanding dues to the respondent no.4 with interest @ 18% *per annum*.

It is apparent that the money recoverable by the

respondent no. 3 was required to be paid to the Bank of Baroda against its dues. The communication dated 28th December, 1992 was in respect of the dues of the respondent no. 3 recoverable from the Society. *First*, such communication can never be the subject matter of litigation nor did the respondent no. 4 have *locus standi* to challenge the same. If at all the respondent no. 4 had any claim, it had to take out independent proceeding in such subject matter. *Second*, though the respondent no.4 based its claim on the loan advanced by it on sugarcane crop and a tripartite agreement, neither the loan agreement nor the tripartite agreement has come on record. The claim of the respondent no.4 appears to have been accepted for asking without verifying the record. *Third*, though admittedly the Bank of Baroda had a charge over the said recovery, the Bank of Baroda was not made party before the authorities below.

In above view of the matter, I am of the opinion that the respondent no.4 had no *locus standi* to challenge the communication dated 28th December, 1992. The respondent no.4 did not have legitimate

claim over the dues of the respondent no.3 recoverable from the Society. The entire exercise undertaken by the State Government was without the authority of law.

For the aforesaid reasons, the petition is allowed. The impugned order dated 24th December, 1996 made by the State Government [*Annexure-J to the petition*] is *quashed* and set-aside.

It is not disputed that in view of the proceeding lodged by the respondent no.4, the Society has not paid its dues for transport of sugarcane by the respondent no.3 - either to the respondent no.3 or to the Bank of Baroda as agreed. As the said dues are admitted, the Society will pay the same to the Bank of Baroda with interest @ 18% *per annum* within two weeks from *today*. The said dues be adjusted by the Bank of Baroda against its dues recoverable from the respondent no.3. The respondent no.3 will be entitled to recover the balance; if any. If it is still in deficit, the Bank will be entitled to recover the deficit in accordance with law.

Subject to the above directions, Rule is made absolute. The respondent no.4 will bear the cost of the petition. Cost to each of the parties is quantified at Rs. 2000/=. The respondent no. 4 will also indemnify the Society for the liability to pay interest incurred by it. It is directed that the respondent no.4 will pay to the petitioner Society half of the amount of interest, it is required to pay to the Bank of Baroda, under this order.

{Ms. R.M Doshit, J.}

*Prakash**